

J. Brugh Lower
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4581
jlower@gibbonslaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BROADCAST MUSIC, INC.; HOUSE OF CASH, INC.; RICK SPRINGFIELD MUSIC; EMI MUSIC GROUP GLOBAL LTD. d/b/a SCREEN GEMS-EMI MUSIC INC.; WARNER MUSIC GROUP CORP. d/b/a WARNER-TAMERLANE PUBLISHING CORP.; SONY MUSIC ENTERTAINMENT INC. d/b/a SONY/ATV SONGS LLC; CRUDUP MUSIC; WARNER MUSIC GROUP CORP. d/b/a UNICHAPPELL MUSIC INC.; and HOLLIS MUSIC, INC.,

Plaintiffs,

v.

ELLERY'S GRILL INC. d/b/a ELLERY'S GRILL and JOHN ELLERY,

Defendants.

Civil Action No. 23-20771

Document Electronically Filed

COMPLAINT

Plaintiffs Broadcast Music, Inc.; House of Cash, Inc.; Rick Springfield Music; EMI Music Group Global Ltd. d/b/a Screen Gems-EMI Music Inc.; Warner Music Group Corp. d/b/a Warner-Tamerlane Publishing Corporation; Sony Music Entertainment Inc. d/b/a Sony/ATV Songs LLC; Crudup Music; Warner Music Group Corp. d/b/a Unichappell Music Inc.; and Hollis Music, Inc. (collectively, "Plaintiffs"), for their Complaint against Defendants Ellery's Grill Inc. d/b/a Ellery's

Grill and John Ellery (collectively, “Defendants”), allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

JURISDICTION AND VENUE

1. This is an action for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the “Copyright Act”). This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(a).

THE PARTIES

3. Plaintiff Broadcast Music, Inc. (“BMI”), is a corporation organized and existing under the laws of the State of Delaware. BMI’s principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted the right to license the public performance rights in 20.6 million copyrighted musical compositions (the “BMI Repertoire”), including those which are alleged herein to have been infringed.

4. The Plaintiffs other than BMI are the owners of the copyrights in the musical compositions, which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Federal Rules of Civil Procedure 17(a) and 19(a).

5. Plaintiff House of Cash, Inc. is a corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

6. Plaintiff Rick Springfield Music is a sole proprietorship owned by Richard Lewis Springthorpe. This Plaintiff is a copyright owner of at least one of the songs in this matter.

7. Plaintiff EMI Music Group Global Ltd. is a corporation d/b/a Screen Gems-EMI Music Inc. This Plaintiff is a copyright owner of at least one of the songs in this matter.

8. Plaintiff Warner Music Group Corp. is a corporation d/b/a Warner-Tamerlane Publishing Corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

9. Plaintiff Sony Music Entertainment Inc. is a corporation d/b/a Sony/ATV Songs LLC. This Plaintiff is a copyright owner of at least one of the songs in this matter.

10. Plaintiff Crudup Music is a partnership owned by George A. Crudup, Percy Lee Crudup, Preshell Crudup, Arthureen C. Kellam, James A. Crudup, and Jonas A. Crudup. This Plaintiff is a copyright owner of at least one of the songs in this matter.

11. Plaintiff Warner Music Group Corp. is a corporation d/b/a Unichappell Music Inc. This Plaintiff is a copyright owner of at least one of the songs in this matter.

12. Plaintiff Hollis Music, Inc. is a corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

13. Defendant Ellery's Grill, Inc. is a corporation organized and existing under the laws of the state of New Jersey, which operates, maintains and controls an establishment known as Ellery's Grill (the "Establishment"), located at 701 Lincoln Boulevard, Middlesex, New Jersey 08846, in this district.

14. In connection with the operation of the Establishment, Defendant Ellery's Grill, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

15. Defendant Ellery's Grill, Inc. has a direct financial interest in the Establishment.

16. Defendant John Ellery is an officer of Defendant Ellery's Grill, Inc. with responsibility for the operation and management of that corporation and the Establishment.

17. Defendant John Ellery has the right and ability to supervise the activities of Defendant Ellery's Grill, Inc. and a direct financial interest in that corporation and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

18. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 17.

19. Since May 2019, BMI has reached out to Defendants over forty (40) times, by phone, mail, and email, in an effort to educate Defendants as to their obligations under the Copyright Act with respect to the necessity of purchasing a license for the public performance of musical compositions in the BMI Repertoire. Included in the letters were Cease and Desist Notices, providing Defendants with formal notice that they must immediately cease all use of BMI-licensed music in the Establishment.

20. Plaintiffs allege seven (7) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI Repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

21. Annexed to this Complaint as a schedule (the "Schedule") and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the seven (7) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information (all references to "Lines" are lines on the Schedule): Line 1 providing the claim number; Line 2 listing

the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the copyright registration number(s) for the musical composition; Line 7 showing the dates of infringement; and Line 8 identifying the Establishment where the infringement occurred.

22. For each work identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

23. For each work identified on the Schedule, on or about the dates indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

24. For each work identified on the Schedule, on the dates listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work identified on the Schedule, on the dates listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

25. For each work identified on the Schedule, on the dates listed on Line 7, Defendants publicly performed and/or caused to be publicly performed at the Establishment the musical composition identified on Line 2 without a license or permission to do so. Thus, Defendants have committed copyright infringement.

26. The specific acts of copyright infringement alleged in the Complaint, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable

damage. By continuing to provide unauthorized public performances of works in the BMI Repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

- (I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;
- (II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. § 504(c);
- (III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. § 505; and
- (IV) Plaintiffs have such other and further relief as is just and equitable.

Dated: September 28, 2023
Newark, New Jersey

s/ J. Brugh Lower
J. Brugh Lower
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4581
jlower@gibbonslaw.com

Attorneys for Plaintiffs

Schedule

Line 1	Claim No.	1
Line 2	Musical Composition	Folsom Prison a/k/a Folsom Prison Blues
Line 3	Writer(s)	John R. Cash a/k/a Johnny Cash
Line 4	Publisher Plaintiff(s)	House of Cash, Inc.
Line 5	Date(s) of Registration	2/13/84 1/13/83 9/14/56 11/30/55
Line 6	Registration No(s).	RE 196-295 RE 153-380 Ep 102326 EU 418371
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	2
Line 2	Musical Composition	Jessie's Girl
Line 3	Writer(s)	Richard Lewis Springthorpe a/k/a Rick Springfield
Line 4	Publisher Plaintiff(s)	Richard Lewis Springthorpe, an individual d/b/a Rick Springfield Music
Line 5	Date(s) of Registration	4/28/81 11/20/81
Line 6	Registration No(s).	PA 100-885 PA 124-280
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	3
Line 2	Musical Composition	Last Train To Clarksville
Line 3	Writer(s)	Tommy Boyce; Bobby Hart
Line 4	Publisher Plaintiff(s)	Screen Gems-EMI Music, Inc.
Line 5	Date(s) of Registration	9/8/66 12/2/66
Line 6	Registration No(s).	Eu 959855 Ep 224641
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	4
Line 2	Musical Composition	Long Train Runnin'
Line 3	Writer(s)	Tom Johnston
Line 4	Publisher Plaintiff(s)	Warner-Tamerlane Publishing Corp.
Line 5	Date(s) of Registration	5/14/73
Line 6	Registration No(s).	Ep 311574
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	5
Line 2	Musical Composition	So Into You
Line 3	Writer(s)	Buddy Buie; Robert Nix; Dean Daughtry
Line 4	Publisher Plaintiff(s)	Sony/ATV Songs LLC
Line 5	Date(s) of Registration	12/27/76 10/7/77
Line 6	Registration No(s).	Eu 742498 Ep 374675
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	6
Line 2	Musical Composition	That's All Right
Line 3	Writer(s)	Arthur Crudup
Line 4	Publisher Plaintiff(s)	George A. Crudup, Percy Lee Crudup, Preshell Crudup, Arthureen C. Kellam, James A. Crudup and Jonas A. Crudup, a partnership d/b/a Crudup Music; Unichappell Music Inc.
Line 5	Date(s) of Registration	11/3/83 3/17/55
Line 6	Registration No(s).	RE 185-246 Ep 88276
Line 7	Date(s) of Infringement	06/30/2023
Line 8	Place of Infringement	Ellery's Grill

Line 1	Claim No.	7	
Line 2	Musical Composition	Unicorn a/k/a The Unicorn	
Line 3	Writer(s)	Shel Silverstein	
Line 4	Publisher Plaintiff(s)	Hollis Music, Inc.	
Line 5	Date(s) of Registration	2/22/96 3/29/68	12/24/90 12/13/62
Line 6	Registration No(s).	RE 736-534 Ep 243481	RE 505-889 Eu 749663
Line 7	Date(s) of Infringement	03/17/2023	
Line 8	Place of Infringement	Ellery's Grill	
